A

PP v. LI QIAN

COURT OF APPEAL, PUTRAJAYA
ROHANA YUSUF JCA
YAACOB MD SAM JCA
RHODZARIAH BUJANG JCA
B [APPEAL NO: B-05(LB)-471-12-2016]
4 APRIL 2018

C ***CRIMINAL LAW:*** *Dangerous Drugs Act 1952 – Section 39B(1)(a) – Trafficking in dangerous drugs – Defence of innocent carrier – Whether defeated by act of wilful blindness – Whether defence evidence credible – Whether accused accepted as credible witness – Whether accused showed conduct of person with guilty mind – Whether presumption of knowledge rebutted – Whether safe to convict accused*

D ***CRIMINAL PROCEDURE:*** *Appeal – Appeal against acquittal and discharge – Offence of trafficking in dangerous drugs – Defence of innocent carrier – Whether defeated by act of wilful blindness – Whether defence evidence credible – Whether accused accepted as credible witness – Whether accused showed conduct of person with guilty mind – Whether presumption of knowledge rebutted – Whether safe to convict accused – Dangerous Drugs Act 1952, s. 39B(1)(a)*

E Upon her arrival at the Low-Cost Carrier Terminal ('LCCT') Kuala Lumpur International Airport from Hong Kong, the respondent went through the red lane of the custom to declare her belongings. When her bags were scanned at the machine detector, a suspicious image was seen in the pull black bag ('P26') that she carried. Upon further examination, five transparent F plastic packets containing white powdery substance, confirmed to be methamphetamine with a total weight of 1,394.3g, was found hidden behind the iron bar of the pull bag. The respondent was thus charged for an offence of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'), punishable under s. 39B(2) of the same Act. The trial judge, having found that the prosecution had established a *prima facie* case, G ordered the respondent to enter her defence. The respondent testified, *inter alia*, that she was requested by her boyfriend, Dan, a Nigerian, whom she met in Guangzhou in China, to send one bag of samples in order to facilitate the fashion business, in which Dan was involved to Kuala Lumpur. The respondent testified that Dan had bought the black bag for her and had put H all the personal items of the respondent inside the black bag to be carried by the respondent to Malaysia. She further stated that she did not take any initiative to inspect the content of the black bag because she trusted Dan, whom she said was supposed to come to Malaysia together with her but could not come due to an emergency. The respondent denied that she had any I knowledge of the drugs and thereby denied having possession of the drugs.

Upon the evaluation of the evidence of the prosecution and the defence as a whole, as required under s. 182A(1) of the Criminal Procedure Code, the trial judge found that the respondent's version was credible and had created a reasonable doubt on the prosecution's case. The respondent's defence was found not to be a bare denial or an afterthought. Thus, the respondent succeeded in her defence in raising a reasonable doubt, which eventually rebutted the presumption of knowledge under s. 37(d) of the DDA. The respondent was thus acquitted and discharged. Hence the appeal by the prosecution. In essence, the appeal centred on the issue of whether the respondent, should be protected by her defence of an innocent carrier which would rebut the presumption of knowledge on her part.

Held (dismissing appeal; affirming order of acquittal and discharge)
Per Rohana Yusuf JCA delivering the judgment of the court:

(1) The trial judge found the respondent to be a witness of truth as she had remained consistent and unshaken throughout the event as well as during the trial and her evidence was found to be credible. The trial judge had evaluated the evidence of the defence and having heard the testimony of the respondent, found her evidence credible and had accepted her as a credible witness. As a matter of legal principle, the appellate court should be slow to interfere with findings of facts by the trial court. (paras 27 & 28)

(2) The defence of innocent carrier would be defeated by an act of wilful blindness. The drugs were completely hidden in the luggage and not visible if one were to open it. Thus, even if the respondent were to open the content to check, she would not be able to see anything suspicious because the drugs exhibit was hidden behind the metal pull of P26 and would not be noticeable to her even if P26 was opened. Also, the respondent was not probed in cross-examination if she had any suspicion or made any attempt to check what was in P26 carefully. Her narration was quiet impeccable, and no room for suspicion that was revealed to impute any suspicion or curiosity on her part, in order for the doctrine of wilful blindness to be invoked against her. (paras 32, 34 & 35)

(3) The respondent, upon arrival at the LCCT, choosing to go through the red lane, which required declaration, certainly did not show the conduct of a person with a guilty mind. Besides, based on the testimony of the prosecution witnesses, the respondent was completely calm and had given her full co-operation during the time when she was apprehended at the LCCT upon her arrival, and had only shown panic and worry after she was told that they had found the incriminating drugs in her bag. In the circumstances, there was no error found in the finding of the trial judge that the respondent had rebutted the presumption of knowledge on

A a balance of probabilities. In the absence of any appealable errors warranting interference, it would not be safe to convict the respondent on the charge. (para 36)

Bahasa Malaysia *Headnotes*

B Setibanya di Terminal Penerbangan Kos Rendah ('LCCT') Lapangan Terbang Antarabangsa Kuala Lumpur dari Hong Kong, responden melalui lorong merah kastam untuk mengisytiharkan milikannya. Semasa beg-begnya diimbas di mesin pengesan, satu imej yang diragui terlihat di dalam beg tarik berwarna hitam ('P26') yang dibawanya. Selepas pemeriksaan lanjut, lima
C bungkusan plastik lut sinar mengandungi bahan serbuk putih, yang kemudiannya didapati mengandungi methamphetamine dengan jumlah berat 1,394.3g, didapati tersembunyi di belakang palang besi penarik beg tersebut. Responden, oleh itu, dipertuduh bagi satu kesalahan pengedaran dadah berbahaya bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'), yang boleh dihukum bawah s. 39B(2) Akta yang sama. Hakim bicara, setelah
D mendapati bahawa pendakwaan telah membuktikan kes *prima facie*, memerintahkan responden membela diri. Responden memberi keterangan, *antara lain*, bahawa dia diminta oleh teman lelakinya, Dan, seorang warganegara Nigeria, yang ditemuinya di Guangzhou di China, untuk menghantar sebuah beg mengandungi contoh untuk membantu dalam
E perniagaan fesyen yang mana Dan terlibat, ke Kuala Lumpur. Responden menyatakan bahawa Dan telah membeli beg hitam itu untuknya dan telah memasukkan kesemua barangan peribadi responden ke dalam beg hitam itu untuk dibawa responden ke Malaysia. Dia selanjutnya menyatakan bahawa dia tidak mengambil apa-apa inisiatif untuk memeriksa kandungan beg hitam
F itu kerana dia mempercayai Dan, yang dikatakannya sepatutnya pergi ke Malaysia bersama-sama dengan responden tetapi tidak boleh kerana terdapat satu kecemasan. Responden menafikan apa-apa pengetahuan tentang dadah tersebut dan dengan itu menafikan milikan dadah. Setelah menilai keterangan pendakwaan dan pembelaan secara keseluruhannya seperti yang diperlukan
G bawah s. 182A(1) Kanun Tatacara Jenayah, hakim bicara mendapati versi responden boleh dipercayai dan telah menimbulkan keraguan munasabah atas kes pendakwaan. Pembelaan responden didapati bukan penafian semata-mata atau satu fikiran terkemudian. Oleh itu, responden berjaya dalam pembelaannya membangkitkan keraguan munasabah yang akhirnya mematahkan anggapan pengetahuan bawah s. 37(d) ADB. Responden oleh itu
H dilepaskan dan dibebaskan dan dengan itu, rayuan ini oleh pendakwaan. Secara asasnya, rayuan tersebut berpusat pada isu sama ada responden, atas fakta dan hal keadaan kes, wajar dilindungi oleh pembelaan pembawa tidak bersalah yang akan mematahkan anggapan pengetahuan pada pihaknya.

I

Diputuskan (menolak rayuan; mengesahkan perintah pelepasan dan pembebasan)
Oleh Rohana Yusuf HMR menyampaikan penghakiman mahkamah:

(1) Hakim bicara mendapati responden adalah saksi yang benar kerana dia kekal konsisten dan tidak goyah sepanjang peristiwa tersebut dan juga semasa perbicaraan dan keterangannya didapati boleh dipercayai. Hakim bicara telah menilai keterangan pembelaan dan setelah mendengar keterangan responden, mendapati keterangannya boleh dipercayai dan menerimanya sebagai saksi yang boleh dipercayai. Atas prinsip undang-undang mahkamah rayuan sepatutnya tidak campur tangan dengan dapatan fakta oleh mahkamah bicara.

(2) Pembelaan pembawa teraniaya akan tertolak oleh tindakan yang disengajakan. Dadah tersebut terlindung sepenuhnya dalam beg dan tidak kelihatan kepada sesiapa yang membukanya. Oleh itu, walaupun responden membuka kandungannya untuk diperiksa, dia tidak akan nampak apa-apa yang disyaki kerana ekshibit dadah tersebut tersembunyi di belakang penarik keluli P26 dan tidak akan kelihatan walaupun P26 dibuka. Tambahan lagi, dalam pemeriksaan balas, responden tidak disoal sama ada dia mengesaki apa-apa atau mencuba untuk memeriksa dengan teliti apa yang ada dalam P26. Kenyataannya tiada cacat cela, dan tiada ruang untuk kesangsian yang didedahkan yang menjurus pada apa-apa syak atau perasaan ingin tahu pada responden, agar doktrin tindakan yang disengajakan dibangkitkan terhadapnya.

(3) Responden, setibanya di LCCT, memilih untuk melalui lorong merah, yang memerlukan pengisytiharan, jelas tidak menunjukkan tindakan seseorang dengan perasaan bersalah. Malahan, berdasarkan keterangan saksi-saksi pendakwaan responden jelas tenang dan telah memberikan kerjasama penuh semasa dia ditangkap di LCCT setibanya di sana, dan hanya menunjukkan perasaan panik dan risau selepas dimaklumkan bahawa mereka telah menemui dadah dalam begnya. Dalam keadaan tersebut, tiada kekhilafan didapati dalam dapatan hakim bicara bahawa responden telah mematahkan anggapan pengetahuan atas imbangan kebarangkalian. Tanpa apa-apa kekhilafan yang boleh dirayu yang mewajarkan campur tangan, tidak selamat untuk mensabitkan responden atas pertuduhan tersebut.

Case(s) referred to:
Leow Nghee Lim v. Reg [1955] 1 LNS 53 HC ***(refd)***
Low Kian Boon & Anor v. PP [2010] 5 CLJ 489 FC ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***
PP v. Herlina Purnama Sari [2016] 1 LNS 6 CA ***(dist)***
Tan Ah Tee & Anor v. PP [1978] 1 LNS 193 HC ***(refd)***
Teh Hock Leong v. PP [2008] 4 CLJ 764 FC ***(refd)***
Topaiwah v. Salleh [1968] 1 LNS 161 FC ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 182A(1)
Dangerous Drugs Act 1952, ss. 2, 37(d), 39B(1)(a), (2)

For the appellant - Nik Syahril Ab Rahman; DPP
For the respondent - Tan Choon Hong; M/s Choon Hong & Assocs

[Editor's note: Appeal from High Court, Shah Alam; Criminal Trial No: 45A-77-08-2014 (affirmed).]

Reported by S Barathi

JUDGMENT

Rohana Yusuf JCA:

[1] The respondent was charged and tried in the High Court at Shah Alam for a charge of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (DDA 1952), punishable under s. 39B(2) of the same Act. At the end of the prosecution's case, the learned trial judge found a *prima facie* case being made out. The respondent was ordered to enter her defence. At the end of the defence case, the learned trial judge found the respondent had raised a reasonable doubt on the prosecution's case, proceeded to acquit and discharge the respondent.

[2] Dissatisfied with that decision, the learned Deputy Public Prosecutor (DPP) filed the present appeal. We have heard the appeal and we have dismissed the same and affirmed the order of acquittal and discharge made by the learned trial judge. We set out below our reasons for doing so.

[3] The narration by the prosecution was that the respondent arrived at the Low-Cost Carrier Terminal (LCCT) Kuala Lumpur International Airport on 11 November 2013 about 1.15am by Air Asia AK 1655 flight from Hong Kong. The respondent went through the red lane of the customs to declare her belongings. She was directed by the Customs Officer, Haris bin Abdul Rahman (SP6) to scan her two bags. A handbag in brown colour carrying the brand name Curie (P27) and a pull black bag with a brand name of American Tourister (P26) were scanned at the machine detector 3. Customs officer, Zamri bin Haji Omar (SP5) saw a suspicious image in P26.

[4] The respondent was then directed to carry P26 to the inspection counter 3 for further examination. There SP6 directed the respondent to open the bag which was locked with a combination lock. SP6 found clothes and shoes inside P26. The respondent was directed by SP6 to remove the whole content. P26 was re-scanned and the suspicious image still appeared after the second scanning.

[5] The respondent was later taken to the customs office, Cawangan Pemeriksaan Penumpang 2 for further examination. Five transparent plastic packets containing white powdery substance were found hidden behind the iron bar of the pull bag. Early examination of the white powdery substance was determined as illegal substance by SP6.

[6] SP6 then sent the respondent together with the items confiscated to the investigating officer, Omar bin Hamzah (SP9) for further action. All five plastic packets were later sent to the Chemist Department to be examined. The five plastic packets were found to contain methamphetamine with a total weight of 1,394.3g. The chemist report of the five plastic packets can be found in exh. P25.

[7] At the end of the prosecution's case, the learned trial judge accepted the evidence of the Chemist, Suhana binti Ismail (SP3) that the white powdery substance in the five transparent plastic packets contained 1,394.3g methamphetamine (P18). The learned trial judge found the respondent to have had actual physical possession of the drugs when she was caught with P26 containing the drugs as testified by SP5, SP6 and the customs officer Siti Nur Aisyah bt Kamaruzaman (SP7).

[8] The learned trial judge found the evidence as laid out by the prosecution was sufficient to show that the respondent was having custody and control and possession of the drugs. The respondent was travelling alone at the material time, and she was caught with the incriminating evidence. The tag of the bag was also registered in the respondent's name. On these facts the learned trial judge found that the respondent knew what she was doing and had knowledge of the drugs.

[9] In his judgment the learned trial judge agreed that the element of possession, control and thereby knowledge had been successfully established, citing the various settled authorities by the Federal Court in *Leow Nghee Lim v. Reg* [1955] 1 LNS 53; [1956] 22 MLJ 28, *PP v. Abdul Rahman Akif* [2007] 4 CLJ 337 and *Tan Ah Tee & Anor v. PP* [1978] 1 LNS 193; [1980] 1 MLJ 49. This finding was supported by the fact that the respondent was travelling all by herself from Hong Kong, she was seen pulling P26; she was in direct control of P26 which was under her charge from Hong Kong to LCCT KL and P26 was opened by herself upon direction by SP6.

[10] The learned trial judge observed that the respondent was carrying the drugs exhibit from Hong Kong to Kuala Lumpur which would invoke trafficking under s. 2 of the DDA. The learned trial judge then found that the prosecution had established a *prima facie* case against the respondent. The learned trial judge called the respondent to enter her defence. The respondent elected to give evidence on oath. No other witness was called.

[11] The respondent had given her sworn evidence from the witness box. The respondent's version started with a request by her boyfriend by the name of "Dan", a Nigerian, for her to come to Malaysia. The respondent came from Gewei village, Suichen in Jiangsu State in China. She met Dan in Guangzhou, China in September 2013. They became close with each other. She was a make-up artist. They agreed to delve in fashion business together. In the course of it, Dan requested for her identification card and passport in order to apply for visa. The visa was said to be necessary for the respondent to help Dan in his business. The respondent was found to be truly in love with Dan, by the learned trial judge.

[12] On 6 November 2013, the respondent came to Guangzhou to meet Dan and stayed with him for several days at his apartment in Guangzhou. Dan informed the respondent and discussed his fashion business, which attracted the respondent because she too loves fashion very much. As part of the business proposal, according to the respondent, Dan requested the respondent to send one bag of samples to his friend in Kuala Lumpur, in order to facilitate their fashion business. According to the respondent also, Dan had bought back a black bag for her to carry the sample. She said the black bag she carried contained the samples of clothing for the fashion business. Dan then put all the personal items of the respondent, inside the black bag to be carried by the respondent to Malaysia. The respondent said she did not take any initiative to inspect the contents of the black bag because Dan was her boyfriend and she trusted him enough.

[13] Initially, Dan was supposed to come to Malaysia together with the respondent. To proceed on the journey, first they have to take a taxi to a hotel in Guangzhou, to catch a bus that will go to Shenzhen. At Shenzhen there will be a van that will go to Hong Kong airport. On 11 November 2013, while waiting for a taxi to go to the hotel in Guangzhou, Dan received a phone call. Dan answered the call. After the phone call, Dan then told the respondent that he was not able to come to Malaysia with her, due to an emergency. Dan did not proceed with the trip to Kuala Lumpur. In the end the respondent had to travel by herself first to Guangzhou after that, by bus from Guangzhou to Shenzhen and then by van to Hong Kong airport. The respondent then continued her journey to Malaysia and arrived at LCCT, KL International Airport at about 12pm.

[14] Upon arrival at the airport the respondent, according to SP5 had passed through a red lane, a lane where customs' declaration is to be made. The picture in exh. P17, shows clearly that the respondent was passing through this lane. When her black bag was scanned at the scanning machines, the customs officer informed the respondent that it contained unlawful items, and the respondent was then brought to a room for further examination.

[15] During the further examination by the customs officer, the respondent's hand phone (exh. P27(3)] which used a Malaysian 'sim' card was ringing but the customs officer did not allow the respondent to answer the call. While giving her testimony, the respondent showed Dan's picture and informed that both of them were having an intimate relationship. The respondent showed the short message service (SMS) from Dan indicating such romantic relationship between them. Dan had also sent the respondent a message informing her that "When you arrive at Malaysia the taxi driver will help you call the hotel". The respondent also informed the court that she had given her full co-operation during the examination and did not even try to escape. The respondent denied that she had any knowledge of the drugs and thereby denied having possession of the drugs.

[16] At the end of the defence case, the learned trial judge after evaluating the evidence by the prosecution and the defence as a whole as required under s. 182A(1) of the Criminal Procedure Code, found that the respondent's version was so credible and had created a reasonable doubt on the prosecution's case. According to the learned trial judge, the respondent's defence was not a bare denial or an afterthought. Thus, the learned trial Judge found that the respondent had succeeded in her defence, in raising a reasonable doubt, which eventually rebutted the presumption of knowledge under s. 37(d) of the DDA 1952.

[17] The learned trial judge reiterated that the defence of the respondent focused on Dan as the main player who was then her lover. Dan's picture and SMS were still intact in the respondent's hand phone [exh. P27(2)] since the respondent arrived in Malaysia. The learned trial judge opined that Dan was not a fictitious character, and if only the customs officer had further investigated the existence of Dan, surely the customs officer would agree that Dan existed and that he had played his role in putting the drugs found inside P26, which was later passed to the respondent to be carried. It was found to be reasonably acceptable by the learned trial judge that the respondent did not inspect the contents of P26 which was given by Dan, because of that intimate relationship. Instead, the respondent just followed what was directed by her boyfriend, Dan.

[18] The learned trial judge further supported his finding by the evidence of the prosecution's witnesses who said the respondent was calm while P26 was scanned. The respondent started to look worried only after P26 was further examined at the examination room and after she was informed that it contained unlawful items. That notwithstanding, the respondent still gave her full co-operation to the customs officer and never tried to escape.

[19] The learned trial judge further elaborated in his grounds of judgment at p. 26 that the defence of innocent carrier of the respondent was not fictitious or an afterthought. This was because the respondent had already informed the customs officer when she arrived at the airport that P26 was not hers. The customs officer also was showed the SMS given by Dan which

stated; "When you arrive at Malaysia the taxi driver will help you call the hotel". From these evidence and taken these as a whole the learned trial judge inferred that P26 belonged to Dan and the respondent was only the carrier of it.

[20] The learned trial judge then found the defence had successfully, on a balance of probabilities, rebutted the presumption of knowledge under s. 37(d) of the DDA 1952, and had therefore created doubt on the case of the prosecution.

[21] The learned trial judge had referred to the act of the customs officer who prevented the respondent from answering her phone, as tantamount to a material loophole in the case of the prosecution. If that had been allowed the learned trial judge opined that the customs officer would be able to plan to trap the caller and to get him, or produce him before the court either as an accused person or a witness.

[22] After evaluating the evidence in its entirety, the learned trial judge having found that the respondent had created a reasonable doubt on the prosecution's case, acquitted and discharged the respondent.

[23] In the petition of appeal, learned DPP raised four following grounds:

(i) that the learned trial judge had erred in law and facts for failure to decide that the respondent was not an innocent carrier based on the facts and surrounding circumstances (refer to *PP v. Herlina Purnama Sari* [2016] 1 LNS 6; [2017] 1 MLRA 499);

(ii) the learned trial judge had erred in law and facts after giving unreasonable consideration to the fact that the respondent and Dan were in love solely based on the information in the hand phone [P27(2)] while at the same time the respondent failed to give the details of Dan's profile and who was to be the last receiver of P26 in Malaysia;

(iii) the learned trial judge had erred in law and facts for failure to conclude that whatever role played by Dan, the respondent's role would amount to trafficking in the context of s. 39B(1)(a) of the DDA 1952; and

(iv) the learned trial judge had erred in law and facts because the defence adduced by the respondent had failed to defeat the presumption of knowledge under s. 37(d) of the DDA 1952.

[24] In essence, the appeal by the learned DPP, centres on the issue of whether the respondent, on the facts and circumstances of this case, should be protected by her defence of an innocent carrier which will rebut the presumption of knowledge on her part. In this regard, learned DPP relied and referred to the Federal Court decision in *PP v. Herlina Purnama Sari* [2016] 1 LNS 6; [2017] 1 MLRA 499 where the defence of innocent carrier was rejected on the basis that the accused in that case had every opportunity to check what she was carrying and that she should be reasonably suspicious

of what she was carrying. In that case, the accused was carrying a luggage bag. When it was opened there was a plastic bag containing two boxes of the impugned drugs. Thus, the Federal Court viewed that if the accused had checked she would easily notice the two boxes. Further authority cited by learned DPP is the Federal Court decision in *Teh Hock Leong v. PP* [2008] 4 CLJ 764; [2010] 1 MLJ 741.

[25] At the outset, it must also be pointed out that the law on the defence of innocent carrier is very facts sensitive. It depends on the test of what and how reasonable the accused had acted given the surrounding circumstances. Both knowledge as well as wilful blindness are more often than not inferred from the facts and circumstances of each case. As such, even though some case laws and decisions can serve as useful guidance, it is nevertheless imperative to state that because it requires an intense nature of factual inquiry, they cannot be comprehensive. Though in law the accused has no legal duty not to turn a blind eye but if he chooses to do so, it could be taken as an act of wilful blindness on his part, which in fact amount to actual knowledge in law.

[26] Thus whether or not a presumption of knowledge under the DDA is rebutted on a balance of probabilities will depend on the precise factual analysis of each case.

[27] In the present appeal, the learned trial judge found the respondent testified as SD1 was a witness of truth as she had remained consistent and unshaken throughout the event as well as during the trial and her evidence was found to be credible. The learned trial judge had evaluated the evidence of the defence as mandated under s. 182A of the Criminal Procedure Code and having heard the testimony of the respondent, the learned trial judge found her evidence credible and had accepted her as a credible witness.

[28] As a matter of legal principle, the appellate court should be slow to interfere with the findings of facts by the trial court unless there is a plain and overriding error which affected the assessment of facts as enunciated in *Low Kian Boon & Anor v. PP* [2010] 5 CLJ 489; [2010] 1 MLRA 418 and *Topaiwah v. Salleh* [1968] 1 LNS 161; [1968] 1 MLRA 580.

[29] The defence raised by the respondent had focused on the role played by Dan which according to the learned trial judge, the existence of whom the investigation had failed to do more. Learned DPP stressed on the issue that the identity of Dan was not disclosed by the respondent both in her cautioned statement (D53) as well her testimonies before the learned trial judge. The learned trial judge saw the various messages in the hand phone of the respondent in exh. P27(2) which he found to have supported the oral evidence of the respondent of their intimate relationship. Learned DPP criticised this finding, being a finding purely based on information in the hand phone whereas, the respondent was not able to even provide any other details on Dan.

[30] We are not in agreement with learned DPP. We note that in her examination-in-chief, the respondent when referred to her cautioned statement tendered as exh. D53, at Q17 of her cautioned statement, said that upon her arrival at Guongzhou airport from her place, she was brought to the Condominium where Dan lived. The place was described by her as Fu Hong Kondo, located in Wilayah Jiang Xia. She said she had also given the telephone number of Dan to the customs officer. In her re-examination, she also said that the condominium where Dan lived had a CCTV in the lift, which would record her movements there.

[31] Learned DPP further stressed on the point that in concluding that the respondent had created doubt on the prosecution's case by rebutting the presumption of knowledge which then amounted to raising a defence of innocent carrier, the learned trial judge failed to consider that the respondent had not taken any trouble to check what she was carrying in P26 despite having the bag with her at all material times. It was submitted by learned DPP that the respondent cannot rely on her own wilful blindness to be protected by the defence of innocent carrier, as decided in all the authorities cited on this point.

[32] We agree with learned DPP that the legal principles on this issue is trite. That the defence of innocent carrier will be defeated by an act of wilful blindness. In this case, the respondent was never cross-examined if she had checked the contents of P26 before travelling or during travelling and why she did not do so. What we noted was that the way the drugs exhibit were concealed in P26, would not make the drugs easily noticeable upon checking. Thus, even if the respondent were to open the contents to check, she would not be able to see anything suspicious because the drugs exhibit was hidden behind the metal pull of P26 and would not be noticeable to her even if P26 was opened. This was due to the way the drugs was concealed. This particular fact would distinguish this case with the rest of the decided authorities which support the legal proposition that the law will not protect anyone who claims to be an innocent carrier when he had turned wilfully blind to the obvious. In *PP v. Herlina Purnama Sari (supra)* for example, the drugs were in the luggage, packed in two boxes on top of all the clothings. Thus, anyone who opened the bag and checked would easily notice the two boxes and suspicion would arise as to the contents of the two boxes.

[33] The Federal Court in that case had also deliberated on the concept of wilful blindness which was summarised "to be applicable to a situation where the circumstances are such as to raise suspicion sufficient for a reasonable person to be put on inquiry as to the legitimacy of a particular transaction". Only when the situation is such, and that it will arise suspicion, then it becomes incumbent for that person to make necessary inquiries to satisfy himself as to the genuineness of the information given to him. It must also be pointed out here that, that person has no legal duty to do so, but if there is at least a reason to be suspicious it would be sufficient to ground a finding of wilful blindness.

[34] Back to the present facts, the respondent was told by her boyfriend Dan to send sample clothings to Kuala Lumpur. Dan was supposed to come along with her and on the way to Guangzhou to commence the journey to Kuala Lumpur which he had to back out, supposedly on some urgent basis. She was then told to carry the luggage carrying the sample of clothing to a person in Kuala Lumpur who would call her upon arrival. The drugs was completely hidden in the luggage and not visible if one were to open it. In this regard the evidence of SP5, the customs officer on duty at LCCT at the material time, had explained how the drugs exhibit was completely hidden in P26. The witnesses for the prosecution had explained that to obtain the drugs exhibit he had to tear the cloth lining at the bottom part of the luggage. (At pp. 22 and 23) SP6 testified:

Q : Bagaimana pembongkaran bermula?

A : Saya keluarkan pakaian, saya dan Tuan Omar mula mengopek lantai berwarna hitam sehingga habis kerana sebelum ini saya kopek sedikit sahaja.

Q : Tuan masih ingat berapa lapisan dalam beg tersebut?

A : Ada pakaian dan kain berzip dan 2 batang besi beg tarik yang terpaksa ditarik.

Q : Bermula dengan kopek kain yang berzip?

A : Buka zip tidak perlu dikoyakkan dan terjumpa lantai plastik berwarna hitam.

Q : Kemudian?

A : Kopek sehingga habis.

Q : Menanggalkan besi menggunakan apa?

A : Tarik sekuat hati.

Q : Tuan potong lapik menggunakan apa?

A : Pisau dan screwdriver, kami cuba untuk mengopek.

[35] The respondent was not probed in cross-examination if she had any suspicion and had made attempts to check what is in P26 carefully. Because her narration was quite impeccable, and there was no room for suspicion that was revealed, to impute any suspicion or curiosity on her part, in order that the doctrine of wilful blindness can be invoked against her as decided in *Herlina*.

[36] Coupled with such narration and what was even more telling was the fact that the respondent had upon arrival, chose to go through the red lane to declare her luggage before the customs officer instead of going through the green lane which requires no declaration. This was also evidenced in the picture of the respondent at the arrival in exh. P17A (2-4) where she walked through the red lane knowing that she will have to disclose whatever she was

carrying with her. This certainly does not show the conduct of a person with a guilty mind. Besides, all the relevant witnesses for the prosecution, had testified that the respondent was completely calm and had given her full co-operation during that time when she was apprehended at the LCCT upon her arrival, and had only shown panic and worry only after she was told that they found the incriminating drugs in her bag.

[37] From all the above accounts we do not find error in the finding of the learned trial judge, that the respondent had rebutted the presumption of knowledge on a balance of probabilities. We find no error in that finding of facts and the reliance of the learned trial judge on the evidence of the respondent as a witness, which the learned trial judge found to be reliable. The finding of the learned trial judge in our view, is well supported by necessary evidence and inferences.

[38] We are mindful of the legal principle, that the appellate court should be slow to interfere with the findings of fact as the trial judge being the trier of facts is always in the better position to assess the evidence and credibility of a witness (see *Low Kian Boon & Anor v. PP* [2010] 5 CLJ 489; [2010] 1 MLRA 418). We on our part, do not find any appealable errors that warrant interference, on both fact finding and credibility of the respondent in her testimony. We agreed with the learned trial judge on the finding as they were findings made supported by clear evidence before him.

[39] Having perused through the Appeal Records before us, we agree with the learned trial judge, that it would not be safe to convict the respondent on the charge in the circumstances. We therefore dismissed the appeal of the learned DPP, and affirmed the order of acquittal and discharge, of the respondent made by the learned High Court Judge.